Division Bench

(3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

(P.I.L.) WRIT PETITION NO. 439 /2004

PETITIONERS

1. Ku. A. Indra, Daughter of A. Venkat, aged about 33 years,

2. Manohar Jethani, son of late Dr. Varial Das Jethani, aged about 38 years,

Both are resident of Ganesh Ram Nagar, Baans Taal, Amardeep Talkies Road, Raipur (Chhattisgarh)

3. Santosh Kumar Mishra, son of Late R.C. Mishra, aged about 38 years, Resident of Nandi Chowk, Tikarapara, Raipur (Chhattisgarh.)

P.R. No. 4401/04
Presented by Shri A.M. Prasad Counsel
dated 9/11/04

VERSUS

RESPONDENTS

1. State of Chhattisgarh, through : the Secretary, Department of Health and Family Welfare, Dau Kalyan Singh Bhawan, Mantralay, Raipur (C.G.)

2. The Secretary, Department of Home Affairs, D.K.S. Bhawan, Mantralay, Raipur (Chhattisgarh)

Commissioner, Municipal Corporation, Raipur (CG)

Attested
9/11/04

ARC(S) 29/3/05
Court order 5/12/05

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA, 1950 FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS ETC. AND FOR APPROPRIATE ORDER / ORDERS, DIRECTION / DIRECTIONS.

Per Dated. Mr

4) Sheikh Maqbool Qurashi, S/o Sheikh Usman, aged about 40 years, Pandri Bazar, Raipur, Tahsil and District Raipur (C.G.)

5) [illegible] S/o Mohammed Hanef aged about 40 years, R/o Fafadih Bazar, Raipur, Tahsil and District Raipur (C.G.)

6) Madan Lal Singh, S/o Shri Harnam Das, aged about 50 years, R/o. Tatibandh. Raipur, Tahsil and District Raipur (C.G.)

7) Kunj Lal Dhangar S/o Bhuwan Lal [illegible] years Tikrapara, Matri Bazar, Raipur, Tahsil and District Raipur (C.G.)

8) Tumar Singh Pal, S/o Kartik Ram, aged about 68 years, R/o Tikrapara, Matri Bazar Raipur Tahsil and District Raipur (C.G.)

9) Sami Afsar Quereshi, S/o Syed Ramzan aged about 42 years, R/o Nehru Nagar, Raipur Tahsil and District Raipur (C.G.)

10) Sheikh Waheed, S/o Sheikh Mehmood, 48 years, Vivekanand Ashram, Raipur, Tahsil and District Raipur (C.G.)

11) Sheikh Baji, S/o Sheikh Daud, aged about 70 years, Aspatal Ward, Raipur Tahsil and District Raipur (C.G.)

12) Mamta Pal, D/o Raju Pal, aged about 35 years, R/o Shyam Nagar, Raipur, Tahsil and District Raipur (C.G.)

13) Sheikh Ghaus Quereshi, S/o Sheikh Ibrahim, aged about 27 years, R/o. Pandri Bazar, Raipur, Tahsil and District Raipur (C.G.)

14) Mohammed Ikram Quereshi, S/o Mohammed Siddiqua Quereshi, S/o 28 years, R/o Ganj Bazar, Raipur, Tahsil and District Raipur (C.G.)

15) Altaf @ Kanna, S/o Sayed Ramzan, aged about 35 years, R/o Modhapara, Raipur Tahsil and District Raipur (C.G.)

16) Mohammed Javed, S/o Ghulam Nabi, aged about 35 years, R/o Vivekanand Ashram, Adarsh Bazar, Idgah Bazar, Raipur, Tahsil and District Raipur (C.G.)

17) Ghulam Rasool, S/o Ghulam Nabi, aged about 50 years, R/o Fafadih Bazar Raipur, Tahsil and District Raipur (C.G.)

18) Sheik Khalil, S/o Sheikh Dawood, aged about 60 years, R/o. Katora Talab, Raipur Tahsil and District Raipur (C.G.)

19) Sheikh Shafi Quereshi, S/o Sheikh Rafi, aged about 25 years, Katora Talab, Raipur, Tahsil and District Raipur (C.G.)

20) [redacted] Sheikh Bibba Jani, aged about 45 years, Sarani Chauk, Lakhe Nagar, Raipur, Tahsil and District Raipur (C.G.)

21) Firoz Quereshi S/o. Mohammed Innuddin, aged about ~~&~~ 35 years, R/o Ashrani Nagar, Raipur, Tahsil and District Raipur (C.G.)

22) Sheikh Israel, S/o Sheikh Ismael, aged about 30 years, R/o Mahua Bazar, Raipur, Tahsil and District Raipur (C.G.)

23) Sheikh Hussain, S/o Sheikh Chhote, aged about 38 years, R/o. Telibandha, Raipur Tahsil and District Raipur (C.G.)

24) Deepak Kumar Pal, S/o Bahadur Singh, aged about 22 years, R/o Tikrapara, Raipur, Tahsil and District Raipur (C.G.)

25) Prabhakar Rao Savarkar, S/o. Chatur Ram, aged about 32, R/o Tatibandh Road, Raipur Tahsil and District Raipur (C.G.)

26) Amir Quereshi, S/o Sheikh Ameen, aged about 28 years, R/o Nehru Nagar, Raipur Tahsil and district Raipur (C.G.)

27) Munna Pal, S/o Pancham, aged about 36 years, R/o. Tatibandh, Raipur. Tahsil and District Raipur (C.G.)

28) Nain Singh Pal, S/o Bihari Lal, aged about 42 years, R/o. Rajendra Nagar, Raipur, Tahsil and District Raipur (C.G.)

29) Ibrahim Quereshi, S/o Late Ismail, aged about 25 years, R/o Shankar Nagar, Khamardih, Raipur, Tahsil and District Raipur (C.G.)

30) Sheikh Allen, S/o Sheikh Moinuddin, aged about 28 years, Sanjay Nagar, Raipur, Tahsil and District Raipur (C.G.)

31) Nawab Quereshi, S/o Sheikh Bashir Quereshi, aged about 35 years R/o Telibandha, Raipur Tahsil and District Raipur (C.G.)

32) Sadiqe Hussain, S/o Jadda aged about 28 years, R/o Guadhiyari, Raipur, Tahsi and District Raipur (C.G.)

33) Sheikh Salim Quereshi S/o. Sheikh Muneer, aged about 36 years, R/o. Lodhipara Chauk, Raipur, Tahsil and District Raipur (C.G.)

34) Mohammed Zakir Hussein, S/o Mohammed Zaber Hussein, aged about 20 years, R/o Modhapara, Raipur, Tahsil and Distt. Raipur.

35) Mohammed Arif Quereshi, S/o. Sheikh Ahmed, aged about 35 years, R/o. Kota, Raipur, Tahsil and District Raipur (C.G.)

36) Sheikh Hamid, S/o Sheikh Mehboob, aged about 32 years, R/o Bairan Bazar, Raipur, Tahsil and District Raipur (C.G.)

37) Sheikh Habib Quereshi, S/o Sheikh Mahboob aged about 24 years, R/o Byran Bazar, Raipur, Tahsil and District Raipur (C.G.)

38) Abid Hussein, Spo Mohammed Judda, aged about 45 years, R/o Pandri Bazar, Raipur, Tahsil and District Raipur (C.G.)

39) Zuber Ahmed, S/o Jaddu, aged about 35 years, R/o Maudhapar, Raipur, Tahsil and District Raipur (C.G.)

40) Saved Ahmed, S/o Jaddu, aged about 32 years, R/o Raja Talab, Raipur, Tahsil and District Raipur (C.G.)

41) Sheikh Mannan, Spo Usman, aged about 32 years, Rpo Pandri Railway Line, Raipur, Tahsil and District Raipur (C.G.)

42) Sheikh Aziz, S/o Sheikh Chhote, aged about 40 years, R/o Gudhiyari Raipur, Tahsil and District Raipur (C.G.)

43) Sheikh Wahid, Spo Sheikh Karim aged about 30 years R/o Telibandha, Raipur, Tahsil and District Raipur (C.G.)

44) Sheikh Kabir, Spo Usman, aged about 25 years, R/o Pandri, Raipur, Tahsil and District Raipur (C.G.)

45) Mohammed Salim Quereshi, S/o Munir Quereshi, aged about 35 years, R/o Lodhipara, Raipur, Tahsil and District Raipur (C.G.)

46) Mohammed Bilal Quereshi, S/o Mohammed Ghulam Nabi, aged about 45 years, Sarani Chawk, Raipur, Tahsil and Distt. Raipur (C.G.)

47) Sheikh Baba Jani, S/o Chhagan Quereshi, aged about 65 years, R/o. Nehru Nagar Chawk, Raipur, Tahsil and Distt. Raipur (C.G.)

48) Sheikh Aslam, S/o Sheikh Qamar Quereshi, aged about 26 years, R/o New Shastri Market, Byran Bazar, Banstal, Raipur, Tahsil And District Raipur (C.G.)

49) Sheikh Ajju Quereshi, Spo Sheikh Karim, Aged about 35 years, R/o Gudhiyari, Raipur, Tahsil and District Raipur (C.G.)

50) Mohhamad Ismile S/o Sheikh Ahamad aged about 35 years R/o Baijnathpara, Raipur (C.G.)

51) Mohhamad Usman S/o Late Shri Shaikh Usman aged about 57 years R/o Baijnathpara, Raipur (C.G.)

52) Mohhamad Ibrahim, s/o Late Sheikh Ahamad Qureshi aged about 55years R/o Baijnathpara, Raipur (C.G.)

M.K.Jain Adv.

53) Pam Raju Broyler House Bansbasi Amardeep Talkies Road Raipur Distt. Raipur (C.G.)

AFR

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM : **Hon'ble Shri A.K. Patnaik, CJ**
& Hon'ble Shri D.R. Deshmukh, J.

WRIT PETITION NO.4391 OF 2004

Ku. A. Indra and two others

Versus

State of Chhattisgarh & others

WRIT PETITION NO.4251 OF 2005

C.G. Poultry Dealer Association Society

Versus

Municipal Corporation, Raipur and another

Present:

For the petitioners	:	Mr. Virendra Sharma and Dr. N.K. Shukla, Sr. Adv., with Mr. Goutam Bhaduri, Advocates.
For respondent No.1	:	Mr. Sumesh Bajaj, Govt. Advocate.
For the Municipal Corporation, Raipur	:	Mr. H.B. Agrawal, Sr. Adv., with Miss Shipra Biswas, Advocate.

O R D E R
(Passed on 19th September 2005)

The following Order of the Court was passed by **A.K. Patnaik, CJ:**

Writ Petition No.4391 of 2004 is a Public Interest Litigation filed by three residents of Raipur city. The petitioners have stated in the said writ petition that Jawahar Market in the Raipur City is in the very heart of the city and thousands of the people of the State passed through the said market but in the said market animals are slaughtered and thrown

here and there in open space and the market stinks of a foul smell and stray dogs fight between themselves to get a piece of flesh of animal and endanger the life of the people visiting the market. The petitioner has further stated that the Commissioner of the Raipur Municipal Corporation has been requested time and again to implement the provisions of Sections 255 and 257 of the Chhattisgarh Municipal Corporation Act, 1956 (*for short the "Act"*) and to ensure that the business of slaughtering animals and selling meet, chicken, fish and eggs etc. is regulated in through licences and is carried on only in specified places in accordance with the said provisions of Sections 255 and 257 of the Act, but despite the said requests, no steps have been taken by the Raipur Municipal Corporation to regulate the said business.

(3) Writ Petition No.4251 of 2005 has been filed by the C.G. Poultry Dealer Association Society. The case of the petitioner in the said writ petition is that the Municipal Corporation, Raipur is taking coercive steps to close down the business of selling chicken and eggs carried on by the members of the petitioner-association in different areas in Raipur city. They have stated in the petition that for 30 to 40 years, the business of selling meet and chicken was confined to Jawahar Nagar, Raipur, but by growth of population in the Raipur City the demand for chicken and eggs has increased manifold and for the last 20 years Telibandha in Raipur has also developed into a market for chicken. The petitioner has further stated in the writ petition that the members of the petitioner-association carry on the business of chicken and eggs to earn their livelihood and if their aforesaid business are closed down by the authorities of the Raipur Municipal Corporation their right under Articles 21, 39(a), 19(1)(g) and 41 of the Constitution would be adversely affected.

(4) Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. If the Municipal Corporation, Raipur is closing down the business of selling chicken and eggs in the Raipur Municipal area, we fail to see as to how the right to life and personal liberty of the members of the petitioner-association in any way affected. Article 39(a) of the Constitution states that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. This is a provision in Part-IV of the Constitution and is a directive principle of State policy and is not enforceable in the Court of law as stated in Article 37 of the Constitution. Article 41 states that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. This is a provision in Part-IV of the Constitution and is not enforceable in the Court of law. In any case, the said provisions in Articles 39(a) and 41 of the Constitution have no application to the present case in which the petitioner-association is making a grievance that its members are not being allowed to carry on their business of selling chicken and eggs in the Raipur Municipal area.

(5) The provision of the Constitution which is really applicable to the present case is Article 19 (1)(g) which provides that all citizens shall have the right to practise any profession, or to carry on any occupation, trade or business. Article 19(6) of the Constitution, however, provides that nothing in article 19(1)(g) shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing,

in the interests of the general public, reasonable restrictions on the exercise of the right conferred by Article 19(1)(g). Hence, even if the members of the petitioner-association have a right to carry on the retail business of selling chicken and eggs in the Raipur Municipal area, the State can make a law imposing in the interests of general public reasonable restrictions on the exercise of such right under Article 19(1)(6) of the Constitution.

(6) In **Bombay Hawkers' Union Vs. Bombay Municipal Corporation, AIR 1985 SC 1206,** a question arose as to whether a hawker has a right to squat on the roadside for engaging in trading and business and the Supreme Court held that the public streets by their nomenclature and definition are meant for the use of the general public and they are not laid to facilitate the carrying on their private business and if hawkers were to be conceded the right claimed by them, they could hold the society to ransom by squatting on the busy thoroughfares, thereby paralyzing all civic life. After considering the aforesaid law laid down in **Bombay Hawkers' Union Vs. Bombay Municipal Corporation** (supra) the Supreme Court has held in **Maharashtra Ekta Hawkers Union and another Vs. Municipal Corporation, Greater Mumbai and another, 2003 AIR SCW,** that the hawkers have a right under Article 19(1)(g) of the Constitution but this right of the hawkers is subject to reasonable restrictions under Article 19(6). In the said decision, the Supreme Court observed that hawking may not be permitted in a narrow road where free flow of traffic or movement of pedestrians is hindered by the hawkers and the buying public or such hawking may not be permitted in areas for security reasons or in the area near hospitals, places or worship etc. and

there is no fundamental right under Article 19(1)(g) of the Constitution to do hawking at any particular place.

(7) But in both, **Bombay Hawkers' Union Vs. Bombay Municipal Corporation** (supra) and **Maharashtra Ekta Hawkers Union and another Vs. Municipal Corporation, Greater Mumbai and another** (supra), the Supreme Court observed that if the hawking business is regulated according to the exigency of circumstances, it may add to the convenience and comfort of the general public by making available ordinary articles of everyday use for a comparatively lesser price. We may add here that the articles of ordinary use can be obtained by the general public from the hawkers at much lesser price than at which such articles should be available in the market place. This is because there is less cost involved in selling articles along with roadside for hawkers whereas heavy cost is involved in taking a shop or premises on rent in a market place or in shopping complex. Not everyone can afford to take on rent a premise in the market place or in the shopping hall and persons who cannot afford such costs in market place or a shop in shopping complex have to also live by carrying on their business. The Municipal Corporations should make provisions for such hawkers to carry on their retail business in a regulated manner in the areas where carrying on such business does not affect the interest of general public.

(8) As a matter of fact, we find that Section 255 of the Act provides that no person shall sell or expose for sale any animal or any meat or fish intended for human food in any place other than a Corporation or licensed marked. Selling of animals or any meat or fish is not totally prohibited under the Act., but is permitted in specific places and in terms of the licence issued by the Municipal Corporation. Section 257

of the Act makes a provision regarding the places where slaughter of animals or sale can be carried out and also makes provisions for grant of licences for the use of such specific premises for slaughter of animals and for charging of rent or fees by the Corporation if such premises belong to the Corporation. This provision also indicates that the slaughter of animals for sale is not totally prohibited under the Chhattisgarh Municipal Corporation Act, 1956 but is permitted only in some specified areas in terms of the licences.

(9) The Raipur city is growing very fast. Its population is expending and with the expansion of population, the demand for different articles by the residents of the Raipur city including the demand for chicken and eggs is likely to grow. Obviously, the residents of Raipur city cannot be asked to go to areas outside the Municipal area to purchase their requirements of chicken and eggs unless there is some law which prohibits altogether the sale of chicken and eggs in the Raipur Municipal area. For the convenience of the general public of Raipur city, therefore, the Raipur Municipal Corporation has to earmark areas in which chicken and eggs can be sold in terms of a licence granted to those who intend to sell chicken and eggs. This will ensure that the rights of the citizens such as the members of the petitioner-association to carry on business of selling chicken and eggs under Article 19(1)(g) of the Constitution is not affected and at the same time is regulated in the interest of general public in accordance with Article 19(6) of the Constitution.

(10) We accordingly direct that the members of the petitioner-association may file their applications before the Commissioner, Municipal Corporation, Raipur for licences to carry on business of selling of chicken and eggs and on such applications being filed, the Commissioner,

Municipal Corporation, Raipur will consider the same in accordance with the provisions of the Chhattisgarh Municipal Corporation Act, 1956 and any rules or bye-laws made with regard to the terms of the licences under Section 366 of the said Act and pass orders on such applications within a period of two months from the date of receipt of the said applications. We also direct the Municipal Corporation Raipur as well as the Commissioner to ensure that the provisions of Sections 255 and 257 of the said Act are followed and implemented in all respects. If anybody is found violating the said provisions of Sections 255 and 257 of the said Act, steps will be taken by the appropriate authorities for prosecuting such persons in accordance with law.

(11) With the aforesaid directions, the writ petitions stand disposed of.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge